# New Zealand Employment Relations Authority Decisions



## Parkes v Squires Manufacturing Limited [2011] NZERA 257; [2011] NZERA Wellington 71 (4 May 2011)

Last Updated: 18 May 2011

**IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON**

[2011] NZERA Wellington 71 5292117

BETWEEN SYLVIA PARKES

Applicant

AND SQUIRES

MANUFACTURING LIMITED

Respondent

Member of Authority: P R Stapp
Submissions Received: By 4 May 2011
Determination: 4 May 2011

**COSTS DETERMINATION OF THE AUTHORITY**

[1] In a determination dated 11 February 2011 [2011] NZERA Wellington 22 the matter of costs was reserved. Costs have not been settled between the parties and now the issue of costs must be decided for the parties. Both parties had an opportunity to exchange and file submissions, but have ended up competing for the last right of reply. Their submissions have been accepted, but the competition for the last right of reply has been unnecessary. The usual practice is for a party to apply first, the other party has a right of reply and the first party applying has the final reply.

[2] The applicant has applied for costs. She was successful in the substantive determination. Mr Andrews for the applicant submitted that a *Calderbank* offer for settlement made by the respondent was below the amount awarded by the Authority and as such can not apply.

[3] The applicant has requested an amount greater than the usual costs because of the unnecessary greater costs that she was put to due to the respondent's position being an unrealistic view to maintain, especially after the Employment Court laid down the principles to apply to trial clauses under the Employment Relations Act.

[4] Alternatively, the Authority has been requested to consider an invoice for the costs incurred by the applicant after the parties received the Court's Judgment for consideration.

[5] The respondent has requested that costs should lie where they fall. This is based on the unusual circumstances where the Employment Court had not made any judgment on the interpretation of the law at the time of the respondent's action in terminating the applicant's employment. It is accepted by the respondent that the general principles are for costs to follow the event and be awarded to the successful party.

[6] The respondent submits that the applicant's claim is disproportionate to normal costs determinations of the Authority. The respondent has asked that the following factors be taken into account:

(a) The case was not complicated;
(b) The employment relationship problem required the involvement of an Authority member to determine the

application of the *Smith* case;
(c) It was not until after the *Smith* case was received by the parties that the applicant claimed she had signed her employment agreement after her commencement time of employment (almost a year after her termination);
(d) The applicant's original arguments for the dismissal being unjustified were not the reasons that the Authority based its decision on. The Authority applied the *Smith* case and the execution of the employment agreement as determining factors that the dismissal was unjustified;
(e) Costs should only be awarded from the time after the applicant claimed that she signed her employment agreement (ie after the *Smith* case decision was provided to both parties). Costs up to mediation should not be claimed;
(f) It cannot be expected that costs will be treated in a similar fashion as in the former Employment Tribunal and there are very different considerations that apply;
(g) It would be misleading to suggest and infer that there were multiple offers to settle where a single 'without prejudice' offer was made to settle from the applicant on 4 June 2010. There was a *Calderbank* offer which the applicant rejected. It was made to settle the matter without having to engage in a lengthy formal process;
(h) The respondent relied on verbal advice from the Department of Labour to safely terminate the applicant's employment and the respondent fully believed it was not at fault and therefore believed that the offer to resolve the issues between the parties was a generous one.

[7] It was submitted by the respondent that a stay of costs should be put in place pending the outcome of a challenge to the Employment Court.

**Determination**

[8] First let me deal with the application for a stay. It is the usual practice of the Authority to close all relevant matters notwithstanding any challenge that may exist in the Employment Court. Therefore it is my intention to bring some closure on this issue and to ensure the Court will has all matters before it. This is the usual approach.

[9] Secondly, this is a matter for costs. The applicant was successful. The *Calderbank* offer does not apply considering that the remedies were more than the offer made to settle. I have decided not to depart from the usual principle of applying a notional daily tariff. My reason for doing this is that it encompasses all contingencies relating to the investigation of an employment relationship problem. In this case there was nothing unusual in the matter. The parties had tried to settle and save costs. There have been matters raised by the respondent about the substantive issues, but I hold that these matters are not relevant when considering costs. The hearing held on 11 November 2010 lasted for one day. On this basis it is my assessment that costs would be $3,000.00 plus the filing fee.

**Order of the Authority**

[10] By consent both parties agreed that the correct name of the employer was Squires Manufacturing Co. Ltd. By consent I therefore amend the name of the respondent to Squires Manufacturing Co. Ltd.

[11] I order Squires Manufacturing Co. Ltd to pay Sylvia Parkes the sum of $3,000 as a contribution to her legal costs plus the $70.00 filing fee.

P R Stapp

Member of the Employment Relations Authority

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